

IN SENATE OF THE UNITED STATES,

DECEMBER 30, 1823.

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Mr. RUGGLES, from the Committee of Claims, to which was referred the petition of Frederick W. Smith, a Lieutenant in the Navy, made the following

REPORT:

The petitioner states that, in the spring of the year 1815, while he was employed in recruiting men for the sloop of war Ontario, one of Commodore Decatur's squadrons, destined to Algiers, and, while in the act of taking a draft of men on board the said sloop, he lost overboard, in a gale of wind, his pocket book, containing money and vouchers to the amount of eight hundred dollars; and that, by reason of his inability to refund this money, he has been declared a defaulter to the United States, and his pay, as an officer of the Navy, thereby stopped. The petitioner, therefore, prays that Congress would pass a law authorizing the equitable settlement of his accounts, upon such evidence as is in his power to produce.

It appears, by the evidence before the committee, that the petitioner advertised the loss of his pocket book in the New York Evening Post, on the next day after the accident took place, supposing, from the tide and wind, that it would probably float in the direction to Long Island or Governor's Island.

Greene Keith Spence states that, he accompanied the petitioner from the United States' sloop of war Ontario, in a boat to the landing at New York; and that, the said Smith did, to the best of his recollection, have charge of and conduct the said boat. He further states, that he distinctly recollects, that when they arrived at the landing, that papers were discovered scattered in the after part of the boat, and that the pockets of said Smith's coat were turned up and suspended over the water, and, upon his discovering this, exclaimed that he had lost his pocket book and all his recruiting money. He further states, that the water was rough and boisterous, and that he believes Smith was returning from the delivery of recruits to the vessel.

William N. Gardner, of the United States' Navy, states that he was officer of the boat when the petitioner lost his pocket book, which he informed him contained five hundred dollars—that he made every exertion to find it again by returning to the ship and pulling about the river in the direction from which the boat had departed, but was unable to regain it.

John B. Montgomery, of the Navy, states that, while he was recruiting with the petitioner for the United States' sloop of war Ontario, lying at New York, in April and May, 1815, that the petitioner, while passing in a boat between the Ontario and the battery, (as he informed him on his return to the rendezvous,) lost his pocket book containing from \$350 to \$400 of public money, and, also, vouchers and receipts for discount paid on Treasury notes, the amount of which is not recollected.

By a communication from the Navy Department to the committee, it appears that the petitioner received, between the first of November, 1813, and the first of May, 1814, for the purpose of recruiting men for the United States' ship Ontario, \$6,215, \$3,015 of which was in Treasury notes. In the settlement of his accounts, the petitioner has obtained a credit for \$5,587 10, leaving a balance against him \$627 90.

The committee have carefully examined all the evidence produced by the petitioner to establish his claim to an equitable settlement of his accounts. The committee entertain no doubt, but that cases may arise where an officer of the government has public funds to disburse, and has lost the same by unavoidable misfortune or accident, but, that it is the duty of Congress to interfere and grant relief. Such cases, however, ought to be proved by clear and unexceptionable testimony. The loss should not arise from negligence or carelessness, which common prudence and reasonable caution might have prevented. The circumstances proved by the petitioner might, perhaps, create a belief that he lost his pocket book, and the money and vouchers said to be contained in it, in the manner and at the time which is stated—but, there is no direct evidence, except his own affidavit, of his having his pocket [book] in his possession at the time, when the loss is said to have taken place, nor of the amount of money which is stated to be in it. The committee are of opinion, that it would be unsafe and impolitic to grant relief upon testimony of this description. They, therefore, recommend the adoption of the following resolution:

*Resolved*, That the prayer of the petitioner ought not to be granted.